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OFFICE OF PETITIONS

In re Application of
Feldstein
Application No. 09/917,649
Filed: July 31, 2001
Title: Fluidics System

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed June 8, 2006.

The petition to withdraw the holding of abandonment is **Dismissed**.

The petition to revive under 37 CFR 1.137(b) is **Granted**.

This above-identified application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office Action of October 7, 2005. The final Office Action set a three (3) month shortened statutory period for reply. An amendment and RCE were filed on December 7, 2005. Petitioner filed a petition to expunge inter alia the RCE on December 13, 2005. The petition for expungement was granted on May 17, 2006. As a result the restriction requirement mailed on February 22, 2006 was withdrawn and the response to the restriction requirement was deemed as moot. The amendment submitted on December 7, 2005 was considered as a reply to the Final Office Action. An Advisory Action was mailed on May 30, 2006 informing applicant the response filed did not place the application in condition for allowance. Accordingly, this application became abandoned on January 8, 2006. A Notice of Abandonment was mailed on June 2, 2006.

Petitioner contends the holding of abandonment should be withdrawn because when the February 22, 2006 office action was mailed, the Office was aware the RCE was unintended. Further petitioner contends the Office Action failed to indicated the amendment would not be entered without the submission of an RCE.

Petitioner's argument has been considered but deemed unpersuasive. A review of the Office record shows that the submission of the an RCE for an incorrect application was

applicant's error. Once the documents were expunged from the record and the Office action was withdrawn prosecution returned to the treatment of the December 7, 2005 Amendment. Petitioner was not entitled to additional time to a reply to the Office Action. The non-final Office action provided a maximum statutory period of six months. Additional time could not be afforded nor could the Office action be withdrawn.

Pursuant to 37 CFR 1.116 (b), the admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. Further MPEP 711.03 (c) is clear that an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, when the applicant simply permits the maximum extendable statutory period for reply to expire while awaiting a notice of allowance or other action.

Lastly, the submission of a petition does not toll the time for the prosecution of the application.

Alternative Venue

In the alternative, petitioner has requested the above petition be treated under 37 CFR 1.137(b).

The requirements for the filing of a grantable petition under 37 CFR §1.137(b) have been met. This petition is hereby **Granted**.

Pursuant to petitioner's request deposit account no. 50-0281 will be charged the \$1500.00 petition fee.

The application will be forwarded to Technology Center 1743 for treatment of the RCE.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
Petitions Attorney
Office of Petitions